United Nations S/2003/854

Security Council

Distr.: General
29 August 2003

Original: English

**Letter dated 29 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council**

I write with reference to my letter of 6 August 2002 (S/2002/904).

The Counter-Terrorism Committee has received the attached supplementary report from Samoa submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-48884 (E) 071003

## Annex

### Letter dated 22 August 2003 from the Permanent Representative of Samoa to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On instructions from my Government, I have the honour to enclose herewith the further report by Samoa to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

The Government of Samoa stands ready to provide any further information as may be requested by the Committee.

(*Signed*) Tuiloma Neroni **Slade**
Ambassador
Permanent Representative

## Enclosure

**Further Report by SAMOA by way of**
**RESPONSES TO COMMENTS and QUESTIONS OF THE**
**COUNTER-TERRORISM COMMITTEE**
**with respect to the report by SAMOA submitted**
**pursuant to paragraph 6 of Security Council resolution 1373 (2001)**

**Sub-paragraphs 1(a), (b) and (c):**

- ***Provision of copies of the Prevention and Suppression of Terrorism Act 2002 and the Money Laundering Prevention Action 2000 to the CTC***

In April 2002, Samoa's Parliament enacted the *Prevention and Suppression of Terrorism Act 2002*. The Act is being implemented, though to date no prosecutions have been conducted in relation to offences provided for in the Act.

Copies of the *Prevention and Suppression of Terrorism Act 2002,* as well as the *Money Laundering Prevention Action 2000* have already been made available to the Committee for its information.

- ***Provision of a progress report on the establishment and work of the proposed financial intelligence unit***

Samoa's Financial Intelligence Unit (FIU) was established in 2002, and is located within the Money Laundering Prevention Authority set up pursuant to section 10 of the *Money Laundering Prevention Act 2000.* The staff of the FIU have received extensive training on intelligence gathering and analysis and take an active role in providing the Money Laundering Authority with the data, analysis and information necessary to conduct its affairs.

The FIU has responsibility for the following:

i. receiving of suspicious transaction reports from financial institutions;
ii. conveying such reports to the Attorney General and the Commissioner of Police if, having considered the reports, it considers there are reasonable grounds to suspect that a transaction involves proceeds of crime or that a money laundering offence is being, or has been or is about to be committed;
iii. the issue of instructions to any financial institution to take steps as may be appropriate to facilitate any investigation anticipated by the Money Laundering Prevention Authority;
iv. compilation of statistics and records, and provision of relevant information to law enforcement agencies during any financial investigation of suspicious transactions;
v. issue of regulations and guidelines for financial institutions on specific obligations as required under the Act; and
vi. monitoring of financial institutions compliance status with their obligations as required under the Act.

***Future changes and further developments***

Existing legislations are currently being reviewed to further strengthen the legal framework for the effective operation of the FIU in dealing with its stakeholders both locally and abroad as follows:

i. receiving information or reports provided by any law enforcement agency or any other information voluntarily provided in relation to any suspicious transaction, whether it relates to the offence of money laundering or the offence of financing terrorist activities;
ii. enter into an exchange of information agreement with an institution or agency of a foreign State or an international organisation established by governments of foreign States that has both the authority and duties similar to those of the FIU;
iii. examine records and make inquiries into the business affairs of any financial institution for the purpose of ensuring compliance with prevailing legislations or for purpose of carrying out investigations or analyses being undertaken by the FIU; and
iv. enforce compliance by directing and ensuring that all stakeholders comply with and adhere to their respective statutory obligations as required under existing legislation.

The Office of Attorney General, in conjunction with the Central Bank of Samoa, the Ministry of Police and the Division of Customs of the Ministry for Revenue, is currently preparing amendments to the *Money Laundering Prevention Act 2000* for purposes of strengthening and complementing other relevant legislations that are being drafted or developed, namely, the Proceeds of Crime Bill, the Mutual Assistance in Criminal Matters Bill and the Extradition Amendment Bill, in order to achieve a more effective and efficient legal framework for Samoa. Furthermore, such amendments would enhance Samoa's compliance with international standards as being promoted by the Financial Action Task Force on Money Laundering (FATF) and its 40 plus 8 recommendations.

**Sub-paragraph 1(d):**

- ***What laws and practical controls and surveillance measures exists to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism?***

The *Money Laundering Prevention Act 2000* and the *Prevention and Suppression of Terrorism Act 2002* are the two principal legislative measures in place and aimed at deterring the use of funds and other economic resources for financing terrorism activity.

The Money Laundering Prevention Authority established in accordance with the *Money Laundering Prevention Act 2000* and administered by the Central Bank of Samoa has been operational since the enactment of the Act in 2000. The Authority is actively engaged in working with Samoan financial institutions to prevent funds being obtained from or used for criminal activities including the financing of terrorist acts. Complementing the close working relationship between the Authority and financial institutions in combating money laundering and the illegal use and movement of funds for criminal purposes is a number of other practical controls over these institutions. These controls seek to ensure that funds and other economic resources collected for

religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism. These include the audit of procedures and policies of banks and other financial institutions to ensure compliance with their obligations under the *Money Laundering Prevention Act 2000*, the receipt, review and investigation of suspicious transaction reports and the periodic review of business transaction reports (as defined under the Act) retained by financial institutions.

In addition to the active role of the Money Laundering Prevention Authority, Samoa has established the Financial Intelligence Unit and is establishing, under the authority of the Ministry of the Prime Minister, an independent and permanent Transnational Crime Unit (TCU). The TCU is now operational and is staffed by personnel seconded from the Samoa Police Service, Immigration Division of the Ministry of the Prime Minister and Division of Customs. The Unit falls within the portfolio of the Prime Minister and will be responsible for undertaking surveillance operations, intelligence gathering and analysis and investigating crimes of a transnational nature including money laundering, terrorist financing and drug and people smuggling. Staff of the TCU have been identified and have been receiving intensive training in Fiji. Further intensive training is scheduled to take place in Australia later in 2003.

In connection with the practical measures identified above, the Immigration Division is establishing a computerized database for the retention of its records. This includes the electronic processing and storage of information of persons at the entry and exit ports and the introduction of new security technology to be incorporated in to Samoan passports to enable the electronic storage of data and minimizing the risk of fraudulent passports being created.

In addition to the above matters, where funds and other economic resources collected for religious, charitable or cultural purposes are diverted for other purposes, including the financing of terrorism, persons responsible may be prosecuted under the *Crimes Ordinance 1961* for theft (sections 85 – 88); obtaining by false pretence (section 89); receiving stolen property (section 90); conversion of vehicles or vessels, etc (section 91); and breach of trust (section 93). Furthermore, where funds and other economic resources are diverted for other purposes including terrorist financing, those responsible may be sued for recovery of that property or funds.

- ***In view of the efforts of the international community to stop the abuse of informal banking networks, please indicate how that problem is dealt with in Samoa***

With a relatively very small economy in the Pacific region, Samoa's financial system is comprised mainly of licensed financial institutions providing different types of financial services ranging from commercial banking, insurance, superannuation schemes, development banking, money transfers and changers, small sized money lenders and credit unions. The probability therefore of informal banking existing is either very negligible or none at all. Banks and other financial institutions are the main gatekeepers for the inflow and outflow of (foreign) funds, hence a thorough and proper system of monitoring customer information and activity is required in order to detect and prevent potential informal banking activities.

The Money Laundering Prevention Authority will however continue to monitor and pursue effective ways to ensure that all stakeholders adhere to their respective statutory obligations as required under existing legislation.

**Sub-paragraph 2(a):**

- ***Provision of copies of relevant provisions of the Crimes Ordinance 1961***

A copy of the *Crimes Ordinance 1961* has been made available to the Committee for its information. There are no special provisions in the *Crimes Ordinance* that deal specifically with supporting terrorist acts or with measures to suppress recruitments or eliminate the supply of material or assistance to terrorists. This is generally dealt with pursuant to the provisions of the *Prevention and Suppression of Terrorism Act 2002* of Samoa.

- ***Outline of the scope of the Crimes Ordinance 1961 in relation to activities occurring in Samoa that are not specifically of a terrorist nature but are linked to actual or potential acts of terrorism in another country***

By virtue of section 5 of the *Crimes Ordinance 1961*, the scope and application of the ordinance is very broad. Section 5 of the Ordinance provides as follows:

> "**Place of commission of offence** – *For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Samoa, the offence shall be deemed to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.*"

The effect of section 5 is to expand the application of *Crimes Ordinance 1961* to events not necessarily occurring within Samoa but where the act, omission, or any event necessary to complete the offence occurs within Samoa. Where this occurs, the person is deemed to have committed the offence in Samoa and is therefore subject to criminal prosecution.

The activities encompassed by the *Crimes Ordinance 1961* that occur in Samoa that are not specifically of a terrorist nature but may be linked to actual or potential acts of terrorism in another country and caught by the Crimes Ordinance 1961 could include the following:

- section 26 – accessory after the fact;
- sections 59, 61, 63, 64, 66 – provisions concerning murder;
- section 60 – the killing of a child;
- section 69 – conspiracy and inciting murder;
- sections 78, 79, 80 – assault;
- section 108 – the offence of uttering forged documents;
- section 113 – willful damage or destruction of property;
- section 114 – attempt to commit or procure an offence;
- section 115 – accessory after the fact to crime

Section 6 of the *Crimes Ordinance 1961* also confers extra-jurisdictional application of the Ordinance with respect to crimes on ships and aircraft.

**Sub-paragraph 2(c):**

- ***Please provide a list of the bilateral and multilateral treaties on mutual assistance in criminal matters and on extradition to which Samoa is party***

Samoa is party to the following multilateral treaties on mutual assistance in criminal matters:

i. Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963) (Tokyo Convention);
ii. Convention for the Suppression of Unlawful Seizure of Aircraft (1970) (Hague Convention);
iii. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) (Montreal Convention);
iv. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988) (*supplementary* to the 1971 Montreal Convention);
v. Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991); and
vi. International Convention for the Suppression of the Financing of Terrorism (1999).

Samoa is not party to any bilateral treaties on mutual assistance relating to either criminal matters or extradition. The *Extradition Act 1974* however sets out the statutory framework for extradition to occur between Samoa and Commonwealth countries. In the case of Commonwealth countries, section 3 of the *Extradition Act 1974* provides for the manner of designation and extradition to take place. For non-Commonwealth countries an extradition treaty would be required.

**Sub-paragraph 2(e):**

- ***Apart from the special provision to be made by the Prevention and Suppression of Terrorism Bill, what is the competence of the courts of Samoa to deal with criminal acts of each of the following kinds?***
  ***~ an act committed outside Samoa by a person who is a citizen of, or habitually resident in Samoa, whether that person is currently present in Samoa or not; and***
  ***~ an act committed outside Samoa by a foreign national who is currently in Samoa?***

Section 25 of the *Prevention and Suppression of Terrorism Act 2002* specifically deals with the two scenarios in this question, and both situations can be addressed by the Supreme Court of Samoa. Apart from the *Prevention and Suppression of Terrorism Act 2002* and subject to comments above concerning the *Crimes Ordinance 1961*, there are no other provisions elsewhere giving the Supreme Court authority to deal with extra-territorial acts.

**Sub-paragraph 2(f):**

- ***What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or other support of terrorist acts is required to be met and how long, on average, does it actually take in practice to implement such a request in Samoa?***

Samoa treats all requests for judicial assistance in criminal investigations or criminal proceedings seriously. The measure of assistance however is dependent upon the quality and validity of information or supporting documents submitted by the requesting State. There is no legal timeframe for such requests to be met. Each case is treated or handled based on its own circumstances. Nonetheless, if supporting information provided in relation to a request is sound, Samoa's response is immediate as to, for instance, seizure of funds, detainment and prosecution of person or persons who committed or assisted in carrying out a terrorist act, pursuant to Part VII of the *Prevention and Suppression of Terrorism Act 2002*.

**Sub-paragraph 2 (g):**

- ***What measures have been taken to prevent the counterfeiting, forgery or fraudulent use of identity papers and travel documents and what provision exist for the punishment of persons who engage in such activities?***

The Immigration Division, together with the Ministry of Justice, are working on improving procedures already in place for issuance of identity papers and travel documents, for example, the development a new and computerized index system; and proper control and certification of birth certificates, passports, and certificates of identity. Furthermore, prosecutions may be initiated under section 13 of the *Permits and Passports Act 1978* or section 108 of the *Crimes Ordinance 1961* where any person is suspected to have engaged in the counterfeiting, forgery or fraudulent use of identification documentation.

- ***Visits to Samoa by yachts or private aircraft may give rise to issues under para.2(g) of the Resolution. How are such issues addressed by Samoa?***

Aircrafts or yachts visiting Samoa require prior approval or authorization from the Ministry of Transport and the Samoa Ports Authority to land or enter any port of entry into Samoa. The Customs Division and the Immigration Division are also on hand to inspect and process the arrival of persons into Samoa.

With respect to paragraph 2(g) of the Resolution, a National Border Management Committee was established in September 2002. The Committee is chaired by the CEO of the Ministry of the Prime Minister and has been specifically established in order to advise Government on national, regional and global security threats and the management and protection of Samoa's borders. The Committee also reviews border management and protection systems and advises Government on how these systems may be improved.

The Committee comprises the Attorney General, the Commissioner of Police, the Assistant Director of Immigration and the Heads of Government departments and statutory corporations together with representatives from the private sector. The

Committee meets on a monthly basis and provides a forum for confidential dialogue and exchange of information on security and border issues.

A Memorandum of Understanding relating to the exchange and security of information between the stake holders on the Committee has been drafted by the Office of the Attorney General and has been approved in principle by the parties. It is expected that the Memorandum of Understanding will be executed by the parties within the coming months.

The establishment of the Committee provides Government with an improved and responsive capacity to react to threats posed by terrorist and terrorist groups. This capacity will be further enhanced by the establishment of the Transnational Crime Unit.

**Sub-paragraphs 3(a), (b) and (c):**

- ***Is there an institutional mechanism for implementing sub-paragraphs 3(a), (b) and (c) of the Resolution?***

Samoa has taken active steps to formalize institutional mechanisms to implement sub-paragraphs 3(a), (b) and (c) of the resolution. This is demonstrated by the establishment of the National Border Management Committee and the Transnational Crime Unit referred to above.

In addition to the mechanisms above, the Commissioner of Police, the Attorney General, the CEO of the Ministry of Foreign Affairs and Trade and the CEO of the Ministry of the Prime Minister meet on a regular basis to discuss issues dealt with under these sub-paragraphs. All these officers and their Ministries have specific functions in this process, and specific links with other local, regional and international departments and agencies to facilitate the exchange of information, and to undertake specific functions to ensure that these matters are addressed.

**Sub-paragraph 3(d):**

- ***With respect to relevant international conventions and protocols relating to terrorism, what progress has Samoa made in:***

  *i. Becoming a party to the instruments to which it is not yet a party*

Samoa is not party to the following international conventions:

a) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973);
b) International Convention Against the Taking of Hostages (1979);
c) Convention on he Physical Protection of Nuclear Material (1980);
d) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);
e) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the continental Shelf (1988);
f) International Convention for the Suppression of Terrorist Bombings (1997).

Relevant discussions between key Government ministries and partners will need to take place prior to submitting recommendations to Cabinet for Samoa to become a party to the aforementioned conventions.

***ii. Enacting legislations, and making other necessary arrangements, to implement the instruments to which it has become a party?***

Various Government ministries have been involved in incorporating into domestic legislation key instruments to which Samoa is party. An example of this is the *Prevention and Suppression of Terrorism Act 2002* which became law on 25 April 2002. The Act provides the domestic legislative basis upon which these instruments relate. Specifically the Act provides for criminal offences concerning:

- terrorist bombing;
- hostage-taking;
- attacks on internationally protected persons;
- attacks at airports and on aircraft;
- attacks on shipping;
- the financing of terrorism;
- mechanisms to seize terrorist funds and resources;
- a fast-track mechanism to arrest and extradite suspect foreign terrorists and escapees; and
- extra-territorial jurisdiction for Samoan courts to deal with these matters.

**Sub-paragraph 3 (e):**

- ***Have the crimes set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties to which Samoa is party to?***

The *Prevention and Suppression of Terrorism Act 2002* provides a specific fast-track mechanism for the extradition of foreign terrorist suspects and escapees. This mechanism avoids the necessity of including such offences in any bilateral extradition treaty.

**Sub-paragraph 3(g):**

- ***Is it possible under the law of Samoa for requests for the extradition of alleged terrorist to be refused on political grounds?***

Yes. Section 24(3) (a) of the *Prevention and Suppression Terrorism Act 2002* provides for extradition to be refused on the grounds that the Supreme Court is satisfied:

> "That the offence of which that person is accused or was convicted is an offence of a political character... "

This is an existing feature of Samoa's extradition legislation which also features protections against prosecution based upon race, religion, ethnic identity, nationality or political opinions. This is in accordance with the duties of Samoa as a party to a number of human rights instruments, including the Universal Declaration of Human Rights.

**Paragraph 4:**

• ***Addressing concerns expressed in paragraph 4 of the Resolution***

Yes. The Office of Attorney General is currently preparing an amendment to the *Money Laundering Prevention Act 2000* to include the use of funds for the purpose of financing terrorist acts in the definition of money laundering. This will enable the existing anti-money laundering legislation and prevention mechanisms to be used to monitor the financial sector concerning the funding of terrorist acts.

**Other matters:**

• ***Organizational chart***

An organizational chart is being developed and the relevant Government ministries are in consultation on the appropriate features and the manner of its use and operation. The chart will have to be submitted to the Counter-Terrorism Committee when available.